IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 877 of 2006

Date of decision: 01.03.2007

Adarsh Kumar Kanda

..... Petitioners.

Versus

Gurcharan Singh Bedi

..... Respondent.

CORAM: HON'BLE MR. JUSTICE M.M. AGGARWAL

Present:- Mr. Vikas Bahl, Advocate
for the petitioners.

Mr. Amit Jain,Advocate
for the respondent.

M.M.AGGARWAL, J. (ORAL)

This is a petition against the order dated 09.01.2006 passed by Rent Controller, Nawanshahar whereby application for leave to defend filed by the present petitioner, was declined and an order of ejectment was passed in petition filed by the landlord now respondent, under Section 13-B of the East Punjab Urban Rent Restriction Act (hereinafter referred to as 13-B of Act').

On behalf of the petitioners-tenant, it is argued that the landlord had not even alleged in the petition that he is owner of the property for more than five years whereas on behalf of the landlord- respondent, it is argued that this fact was not pleaded by the tenant while making an application for leave to defend.

Section 13 of the Act provides as under:-

"13-B. Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to Non-resident Indian.--(1) Where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinarily living with and dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be.

Provided that a right to apply in respect of such a building under this section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner."

Counsel for the petitioners has relied upon a judgment of Hon'ble Supreme Court in the case of **Baldev Singh Bajwa v. Monish Saini JT 2005 (12) SC 442.** It has been held that a petition under section 13 of the Act is required to prove that : (i) he is a NRI; (ii) that he has returned to India permanently or for the temporary period; (iii) requirement of the accommodation by him or his dependent is genuine and; (iv) he is the owner of the property for the last five years before the institution of the proceedings for ejectment before the Controller.

In this case, it was for the NRI-landlord to aver and prove that he is owner of the property for the last five years before the institution of the proceedings.

Counsel for the respondent-landlord has produced a copy of the sale deed dated 17.04.2000 showing that petitioner had become owner of the property in the year 1994. However, the sale deed is dated 17.04.2000 executed by the Society in favour of the petitioners and the petition was filed in the year 2001. Under these circumstances, it was a fit case where the Rent Controller should have granted permission to the tenant-petitioner to contest the petition.

This petition is allowed and the order dated 09.01.2006 passed by Rent Controller, Nawanshahar, is set aside.

March 01 , 2007 **(M.M. AGGARWAL)**
Dinesh **JUDGE**